

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE SOUTHERN DISTRICT OF GEORGIA  
3                   STATESBORO DIVISION

4

5                   UNITED STATES OF AMERICA,

6                   v.

7                   AUSTON COLE WAGNER,

8                   Defendant.

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13                   CASE NUMBER 3:23-CR-00005

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23                   MOTIONS HEARING

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26                   BEFORE THE HONORABLE BRIAN K. EPPS  
27                   United States Magistrate Judge

28                   United States Courthouse  
29                   52 North Main Street  
30                   Statesboro, Georgia  
31                   May 7, 2024

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73                   COURT REPORTER: Victoria L. Root, CCR  
74                   United States Court Reporter  
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2

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3	9	10

## 1                   P R O C E E D I N G S

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3                   (Call to order at 1:08 p.m.)

4                   COURT CLERK: The Court calls Case 3:23-CR-00005,  
5                   *United States of America v. Auston Cole Wagner*; Jason Blanchard  
6                   for the Government; Tina Maddox for the defendant; here for a  
7                   motions hearing.

8                   THE COURT: Good afternoon, everybody.

9                   MR. BLANCHARD: Good afternoon, Judge.

10                  THE COURT: All right. Let's go through, before we  
11                  start, the exhibits to make sure that I have all those and  
12                  understand what we're presenting today. Let's start with the  
13                  Government's exhibit list.

14                  So the Government is submitting as Exhibit 1 the  
15                  interview with Mr. Wagner.

16                  And is that the interview that took place in the van?

17                  MR. BLANCHARD: Yes, Your Honor.

18                  THE COURT: Okay. And so all the letters under  
19                  that -- 1-A, 1-B, 1-C -- that's just clips from the overall  
20                  video itself?

21                  MR. BLANCHARD: That's correct. All those clips, A  
22                  through P, are just clips from Exhibit 1 itself.

23                  THE COURT: Okay. And, Ms. Maddox, do you have any  
24                  objection to admission of that video of the van interview as  
25                  Exhibit 1?

1 MS. MADDOX: No, Your Honor.

2 THE COURT: Okay. And what's Exhibit 2?

3 MR. BLANCHARD: Exhibit 2 is also a -- sort of a 3-  
4 to 4-minute clip in the van at the end of the drive, and so  
5 it's just the continuation of the van --

6 THE COURT: Okay.

7 MR. BLANCHARD: -- interview.

8 THE COURT: What about, Ms. Maddox, Exhibit 2? Do  
9 you have any objection to it being admitted?

10 MS. MADDOX: No, Your Honor.

11 THE COURT: Okay. What about the rest of these?  
12 Does the Government plan on submitting the remainder?

13 MR. BLANCHARD: Your Honor, we're going to submit  
14 Exhibit 3, which is the consent to search form that Defendant  
15 signed in the van during the interview that's referenced in  
16 Exhibit 1.

17 The Government does not intend to introduce  
18 Exhibits 4, 5, and 6. And so we would like to put on the  
19 record notice that the Government does not intend to use  
20 Exhibits 4, 5, and 6 at its case in chief at trial in this  
21 case. That is the polygraph interview and the interview made  
22 with Special Agent Nielsen after the polygraph that occurs  
23 at the sheriff's office.

24 And so our contention is that the motion to suppress  
25 on those statements is moot. And I've discussed this with

1 Ms. Maddox prior to the hearing today. I think we have an  
2 agreement on that.

3 MS. MADDOX: We do, just what he stated. Those  
4 issues are moot, and those items will not be presented at time  
5 of trial, so, as such, we don't need a ruling on that.

6 THE COURT: Okay. So the polygraph -- so, basically,  
7 the only statements, then, the Government will seek to admit at  
8 trial will be the statements made in the van during the initial  
9 interview while the search was being conducted of the home.  
10 The Government will not admit the -- evidence of any statements  
11 made during the polygraph examination and then the follow-up  
12 interview by Agent Nielsen after the polygraph examination  
13 ended.

14 MR. BLANCHARD: That's correct, with one caveat.  
15 And it's -- Exhibits 7 through 10 are body camera video that  
16 occurred before Defendant Wagner gets into the van. And so  
17 there's an interaction that occurs prior to the interview in  
18 the van that we are submitting into evidence in the case and  
19 do believe is appropriate for use at trial.

20 THE COURT: Okay. Ms. Maddox, what about Exhibits 7,  
21 8, 9 and 10? Do you have any objection to those being  
22 admitted?

23 MS. MADDOX: We don't.

24 And, also, I would like to have Mr. Blanchard recall  
25 that we agreed that any reference to a polygraph will be

1 redacted out of the interview in the van should the Court find  
2 that it is admissible at trial.

3 MR. BLANCHARD: And that's an accurate  
4 representation, Your Honor. We will redact any reference to  
5 the polygraph examination from Exhibit 1 at time of trial.

6 THE COURT: Okay. I'm thinking -- trying to think of  
7 the best way to memorialize the agreement y'all just mentioned.  
8 I could put it in an order myself, or y'all could prepare and  
9 file a stipulation. I like the stipulation idea better  
10 because, that way, I don't mess it up.

11 MR. BLANCHARD: I'd be happy to prepare a stipulation  
12 and circulate it with Ms. Maddox and then submit it to the  
13 Court.

14 THE COURT: Okay.

15 MS. MADDOX: That's exactly --

16 THE COURT: Okay. And y'all can just -- as long as  
17 y'all agree on the language and that it takes care of the  
18 polygraph and second Nielsen interview issues fully, as long as  
19 it's to your satisfaction that those issues are taken care of  
20 by the stipulation, the best thing to do, instead of submitting  
21 it to me for some kind of approval, is just to put it on the  
22 record in the case, just to file it.

23 MR. BLANCHARD: We'll do that, Your Honor.

24 THE COURT: Is that good? Okay.

25 MR. BLANCHARD: Yes, Your Honor.

1                   THE COURT: All right. Now, let's move to the  
2 defense exhibit list.

3                   Do you have any exhibits that aren't already in the  
4 Government's exhibit list that you'd like to have admitted,  
5 Ms. Maddox?

6                   MS. MADDOX: We will admit, at the conclusion of the  
7 hearing, the unofficial transcript, which is more demonstrative  
8 in nature than anything else. Mr. Blanchard and I have agreed  
9 that we can submit that after the hearing for the Court's  
10 review whenever Your Honor goes to review all of this in detail  
11 once the hearing is concluded.

12                  THE COURT: Okay. And remind me what -- so I have  
13 those two transcripts that were attached to Document 56 and  
14 Document 57 on the record. One is the polygraph, itself,  
15 examination. The other is -- it starts off "All units moving  
16 in." So that must have been the initial interview in the van  
17 and the conversation that took place in the van.

18                  So that that he just referred to --

19                  MS. MADDOX: "All units moving in" is the one that we  
20 will be seeking to admit as an exhibit.

21                  THE COURT: Okay. And from your perspective,  
22 Ms. Maddox, have you reviewed every line of this proposed  
23 exhibit, and do you believe it accurately represents the  
24 conversations that are recorded on the video?

25                  MS. MADDOX: I have more than once, and I do believe

1 it's an accurate representation.

2 THE COURT: Okay.

3 MS. MADDOX: However, it's not a certified  
4 transcript. And we do, you know, agree that it's not a  
5 certified transcript.

6 THE COURT: Okay. Well, as long as the parties  
7 stipulate to the accuracy of it, then I'm okay -- I'm safe to  
8 consider it, I believe.

9 MR. BLANCHARD: Your Honor, the discussion we had  
10 was that it's not a certified transcript; it's prepared by an  
11 internet service; and that the best evidence is the video  
12 itself. But this is a helpful tool for the Court to review. I  
13 have not gone through each and every line of it to know whether  
14 it's accurate, and it's not certified by a court reporter.

15 So I have no problem with admitting the exhibit as a  
16 helpful tool to the Court, but I don't believe it's the -- it's  
17 technically the best evidence of the conversation that occurred  
18 and that the best evidence itself would be Exhibits 1, 7, 8, 9,  
19 and 10.

20 THE COURT: Okay. Well, so -- this is Exhibit 3 that  
21 we're talking about of your list, Ms. Maddox?

22 MS. MADDOX: Yes, Your Honor.

23 THE COURT: This -- then -- so you have no objection  
24 to it being admitted, Mr. Blanchard; is that right?

25 MR. BLANCHARD: No objection, Your Honor.

1                   THE COURT: Okay. And, you know, to the extent that  
2 I issue any kind of R&R or order that includes where I rely on  
3 this transcript and you believe that it's not an accurate  
4 reflection, the burden will be on the Government to point that  
5 out.

6                   MR. BLANCHARD: Yes, Your Honor.

7                   THE COURT: Okay.

8                   MR. BLANCHARD: We'll do that.

9                   THE COURT: Okay. Does that take care of all the  
10 exhibits?

11                  MS. MADDOX: Yes, sir.

12                  THE COURT: Because Defense Exhibits 1 through 2 will  
13 not be admitted; is that right?

14                  MS. MADDOX: That's right. We are going to default  
15 to the usage of the Government's . . .

16                  THE COURT: Excellent. All right. So we've narrowed  
17 this down to admissibility of statements that Defendant made  
18 preceding and during the search of his home while being  
19 interviewed by Agent Nielsen in the van and right before that  
20 interview occurring, as reflected in the transcript that we've  
21 now admitted into evidence as Defense Exhibit 3.

22                  Is that right, Mr. Blanchard?

23                  MR. BLANCHARD: That's correct.

24                  THE COURT: Ms. Maddox?

25                  MS. MADDOX: Yes, sir.

THE COURT: All right. Do y'all want to make any opening statements before we begin with the Government's first witness?

MR. BLANCHARD: I'm okay waiving opening statements and calling our witness, if that's acceptable to Ms. Maddox and the Court.

MS. MADDOX: I have no objection to that.

THE COURT: All right. You may proceed,  
Mr. Blanchard.

MR. BLANCHARD: All right. At this time, we would call Special Agent Hillary Nielsen.

(The witness, Hillary Nielsen, was sworn.)

COURT CLERK: You may be seated.

would you please state your full name for the record.

THE WITNESS: Hillary Nielsen.

COURT CLERK: And what agency are you with?

**THE WITNESS:** Homeland Security

COURT CLERK: Thank you.

HILLARY NIELSEN,

having been duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. BLANCHARD:

Q. Good afternoon, Agent Nielsen.

A. Good afternoon.

Q. You're a special agent with Homeland Security

1 Investigations; is that right?

2 A. That's correct.

3 Q. How long have you been employed by Homeland Security  
4 Investigations?

5 A. About 3 and a half years.

6 Q. Okay. I'm going to refer to Homeland Security as HSI.  
7 Is that okay with you?

8 A. Yes.

9 Q. All right. What types of cases do you investigate in your  
10 role at HSI?

11 A. Primarily, I investigate child exploitation cases.

12 Q. Were you involved in the investigation of the defendant in  
13 this case, Auston Cole Wagner?

14 A. Yes, I was.

15 Q. And during the investigation, did you obtain a federal  
16 search warrant for the premises known as 261 Sophia Drive in  
17 Eastman, Georgia?

18 A. Yes, I did.

19 Q. Did you also obtain a federal search warrant for a 2023  
20 Dodge Challenger and the person of Auston Cole Wagner?

21 A. Yes, I did.

22 Q. And what did those warrants authorize you to search for?

23 A. For electronic devices that could access the internet or  
24 store data as well as records or information related to the  
25 production, possession, distribution, or receipt of child

1 pornography.

2 Q. Okay. And when were those federal search warrants  
3 executed in this case?

4 A. May 9th of 2023.

5 Q. Can you describe the operation plan for this search in  
6 general.

7 A. So since we had a search warrant for the premises as well  
8 as the search warrant for a vehicle and the person of  
9 Mr. Wagner, we kind of had two teams for this operation, one to  
10 handle the execution of the premises search warrant at the same  
11 time as the execution of the person and vehicle search warrant.

12 So the plan was to make contact with Mr. Wagner while he  
13 was in his vehicle approaching his residence, to serve the  
14 search warrant on that vehicle as well as on Mr. Wagner's  
15 person. And then simultaneously, a team would be approaching  
16 the residence to serve a search warrant there. Anybody  
17 identified during the execution of any of those search warrants  
18 would then be given the opportunity to interview.

19 Q. Okay. And what was your role in the operation plan  
20 specifically?

21 A. I was the team lead for the operation as well as on the  
22 interview team for Mr. Wagner.

23 Q. Okay. And how did you arrive at the search location that  
24 morning?

25 A. I drove my government vehicle. And I had another

1 investigator with me from Dodge County.

2 Q. Dodge County Sheriff's Department?

3 A. That's correct.

4 Q. Okay. Was your vehicle a van that's issued to you by  
5 Homeland Security?

6 A. It is, yes.

7 Q. All right. Can you describe that van for the Court.

8 A. It is a silver minivan. It has police lights on the  
9 inside, so not visible from the outside, but equipped with  
10 lights and a siren that can be activated from the inside. It  
11 does not have a PA system. It does not have a cage separating  
12 the front seat from the back seat.

13 On the inside, it really looks like a regular minivan,  
14 bucket seats in the back. There are only two seats in that  
15 back center row. But it looks like a regular minivan, pretty  
16 much, inside and out.

17 Q. Okay. That van, is it in any way marked as law  
18 enforcement on the outside?

19 A. No, it's not.

20 Q. Does that van have video or audio equipment installed to  
21 record conversations?

22 A. No, it does not.

23 Q. Okay. Were you wearing a body camera at any point on the  
24 day of the search?

25 A. No, I was not.

1 Q. And why not?

2 A. My office is not issued body cameras.

3 Q. Okay. Were other law enforcement officers wearing a body  
4 camera on the day of the search?

5 A. Yes. Officers from other agencies that had been issued  
6 body cameras were wearing them that day.

7 Q. Okay. And why were they wearing body cameras?

8 A. They were following their local policy.

9 Q. Okay. Their local agent -- agency policy; is that right?

10 A. That's correct.

11 Q. Okay. Is it fair to say that you were captured on body  
12 camera worn by other law enforcement officers on the day of the  
13 search?

14 A. Yes.

15 MR. BLANCHARD: All right. At this time, I'm going  
16 to have my legal -- paralegal, Amy, queue up Clip 10. I don't  
17 know if we need to cut on the audio and video at this point or  
18 not.

19 COURT CLERK: It's on.

20 MR. BLANCHARD: So at this point, I'm going to ask  
21 Amy to queue up Clip 10 and go ahead and play that.

22 (video playing at 1:20 p.m.)

23 MR. BLANCHARD: I'm going to have Amy go ahead and  
24 pause the video at this point.

25 (video stopped at 1:21 p.m.)

1 BY MR. BLANCHARD:

2 Q. Special Agent Nielsen, are you in this video?

3 A. I am.

4 Q. Can you identify yourself on the screen.

5 A. I'm on the far right-hand side of the screen.

6 Q. Okay. Is this footage from a body camera worn by a local  
7 deputy?

8 A. It is.

9 Q. And does this clip accurately reflect your first  
10 interaction with Defendant Wagner on the morning that the  
11 search warrant was executed?

12 A. Yes, it does.

13 Q. Okay.

14 MR. BLANCHARD: Amy, if you wouldn't mind restarting  
15 the clip.

16 (video playing at 1:22 p.m.)

17 MR. BLANCHARD: And, Amy, would you pause the clip  
18 there for me.

19 (video stopped at 1:22 p.m.)

20 MR. BLANCHARD: I should have clarified this before  
21 playing this, Your Honor. This is -- this video clip,  
22 Exhibit [sic] 10, is actually a compilation of three different  
23 body cameras on the scene, and so you're getting different  
24 angles from three different body cameras that are Exhibits 7,  
25 8, and 9 sort of compiled together.

1 BY MR. BLANCHARD:

2 Q. But as to the question, Agent Nielsen, what do you ask  
3 Defendant Wagner initially here as you approached his vehicle?

4 A. I say, "Do you want to step around back here with us for a  
5 second?"

6 Q. And how did he respond to that question?

7 A. In response, he says, "Sure."

8 Q. Okay. What's the purpose of asking him if he would step  
9 back to your van with you at that point?

10 A. To execute the search warrant on his person and then give  
11 him the opportunity to interview.

12 Q. Okay.

13 MR. BLANCHARD: Amy, would you restart the clip.

14 (Video playing at 1:23 p.m.)

15 MR. BLANCHARD: And if you'll pause it right there,  
16 Amy.

17 (Video stopped at 1:23 p.m.)

18 BY MR. BLANCHARD:

19 Q. Special Agent Nielsen, you took Defendant Wagner by the  
20 arm for 4 to 5 seconds there in that clip.

21 Did you see that?

22 A. Yes.

23 Q. And what was the purpose of you taking him by the arm  
24 there?

25 A. A couple of reasons. So he was about to walk into the

1 roadway. But where my vehicle was positioned is actually a few  
2 car lengths back parked on the side of the road that you can  
3 see us standing on now, so I was directing him out of the  
4 roadway, back on the path to my vehicle.

5 I was also aware that there was the residence search  
6 warrant team that was about to be caravaning down this roadway,  
7 so the safest path for us to walk would have been on this  
8 shoulder here and also away from the group of law enforcement  
9 at the front of the vehicle that was just gathered, because  
10 this was the path that the team was aware we'd be taking.

11 Q. Okay.

12 MR. BLANCHARD: Amy, if you'd restart the clip,  
13 please.

14 (Video playing at 1:24 p.m.)

15 MR. BLANCHARD: And, Amy, if you'd go ahead and just  
16 pause the clip there for me, please.

17 (Video stopped at 1:25 p.m.)

18 BY MR. BLANCHARD:

19 Q. Once you walk back to the van with Defendant Wagner here,  
20 what happens?

21 A. This is where the execution of the search warrant on his  
22 person took place.

23 Q. Okay. And as we've got it paused, this illustrates where  
24 you're actually executing the search warrant of the person of  
25 Defendant Wagner; is that right?

1 A. That's correct.

2 Q. Okay. What were the results of the search you performed  
3 on the person of Defendant Wagner?

4 A. He did not have any electronic devices in his possession.  
5 He had some ID cards from his employment.

6 Q. Okay.

7 MR. BLANCHARD: Amy, would you restart the video.

8 (Video played from 1:25 p.m. to 1:27 p.m.)

9 BY MR. BLANCHARD:

10 Q. All right. That takes us through the body camera footage.  
11 Agent Nielsen, at any point between your initial contact  
12 with Defendant Wagner and him actually stepping into the van,  
13 did you ever tell Defendant Wagner he was under arrest?

14 A. No, I did not.

15 Q. Between your initial contact with Defendant Wagner and him  
16 stepping into the van, did you ever tell Defendant Wagner he  
17 was being taken into custody?

18 A. No, I did not.

19 Q. And did you ever tell Defendant Wagner that he was  
20 required to get into your vehicle, the van here in the video?

21 A. No.

22 Q. Did you ever draw your service weapon during your  
23 encounter with Defendant Wagner up to this point?

24 A. No, I did not.

25 Q. Did you ever witness any other law enforcement officer

1 draw a weapon during your encounter with Defendant Wagner up to  
2 this point?

3 A. No.

4 Q. Okay. And up to this point, did you ever witness any  
5 other law enforcement officer tell Defendant Wagner that he was  
6 under arrest?

7 A. No, I did not.

8 Q. Okay.

9 MR. BLANCHARD: I'm going to ask Amy --

10 If you'll go ahead and pull up Video Clip 1-A and  
11 just pause it at the beginning before we start it. Once you  
12 get it on the screen, pause.

13 MS. McCLENDON: (Complied.)

14 BY MR. BLANCHARD:

15 Q. The video clip here, 1-A, does this video reflect the  
16 first time that Defendant Wagner enters your van on May 9th,  
17 2023?

18 A. Yes, it does.

19 Q. Okay. And who set up the camera that's recording this  
20 discussion between you and Defendant Wagner in the van here?

21 A. I did.

22 Q. Okay. Is the camera visible?

23 A. Yes. It was on the dash.

24 Q. Okay. And during the interview, is it apparent that the  
25 camera is recording?

1 A. Yes. There's a red light on top of the camera that  
2 activates whenever it's recording.

3 Q. And will you just give us a general description of, like,  
4 what this camera looks like and how you set it up.

5 A. Sure. So it's a bifold camera essentially made up of two  
6 pieces of plastic. Each one's probably 4 by 6 inches. So it's  
7 like a clam shell. It folds in half and opens back up. So I  
8 just had it in the open, kind of, 90-degree position on the  
9 dash positioned towards the seats in the car.

10 Q. Okay.

11 MR. BLANCHARD: Amy, if you'll go ahead and start the  
12 video.

13 (Video played from 1:29 p.m. to 1:29 p.m.)

14 BY MR. BLANCHARD:

15 Q. All right. So after you get in the van here, how does the  
16 conversation between you and Defendant Wagner start?

17 A. I just introduce myself and gather his basic identifying  
18 information.

19 Q. Okay. I think we got a clip of that.

20 MR. BLANCHARD: Amy, will you pull up 1-0. And if  
21 you'll start it and pause it at the beginning there.

22 MS. McCLENDON: (Complied.)

23 BY MR. BLANCHARD:

24 Q. All right. The time stamp at the beginning of this video  
25 here on the bottom left corner of the screen, that's 7:51 a.m.;

1 is that -- do you see that?

2 A. Yes.

3 Q. And is that accurate?

4 A. Yes.

5 Q. Okay.

6 MR. BLANCHARD: Amy, will you restart.

7 (video playing from 1:30 p.m. to 1:31 p.m.)

8 BY MR. BLANCHARD:

9 Q. All right. Does this clip accurately reflect the  
10 beginning of your conversation with Defendant Wagner in the  
11 van?

12 A. Yes, it does.

13 Q. Okay.

14 MR. BLANCHARD: Amy, would you pull up Clip 1-P. I'm  
15 going to have you, same thing, pause -- start it and pause the  
16 video, please.

17 MS. McCLENDON: (Complied.)

18 BY MR. BLANCHARD:

19 Q. All right. So early in your conversation with  
20 Defendant Wagner, does he inform you that he was working as a  
21 corrections officer?

22 A. Yes, he does.

23 Q. Okay.

24 MR. BLANCHARD: Amy, would you start the video,  
25 please.

1                    (Video played from 1:31 p.m. to 1:37 p.m.)

2 BY MR. BLANCHARD:

3 Q. Agent Nielsen, does that clip accurately reflect what  
4 Defendant Wagner told you about his employment and training as  
5 a corrections officer?

6 A. Yes, it does.

7 Q. And he referenced one acronym there. I just want to see  
8 if you know what it means. He referenced BCOT.

9                    Does that stand for basic correctional officer training?

10 A. Yes, it does.

11 Q. Okay.

12                    MR. BLANCHARD: Amy, if you'd pull up video clip 1-B.  
13 Start it and then pause at the beginning there, please.

14                    MS. McCLENDON: (Complied.)

15 BY MR. BLANCHARD:

16 Q. So, Agent Nielsen, I'm going to direct you to the time  
17 stamp there, bottom left.

18                    The time stamp at the beginning of this video is  
19 8:06 p.m.; is that accurate?

20 A. 8:06 a.m.

21 Q. I'm sorry. Yes. Thank you for correcting me.

22                    8:06 a.m.; is that right?

23 A. (No response.)

24                    MR. BLANCHARD: Amy, if you'd restart the video,  
25 please.

1                    (Video played from 1:38 p.m. to 1:38 p.m.)

2 BY MR. BLANCHARD:

3 Q. Agent Nielsen, is this where you tell Defendant Wagner  
4 that he's not under arrest?

5 A. That's correct.

6 Q. And how did you interpret Defendant Wagner's response to  
7 that statement that you made to him?

8 A. That acknowledged what I said, understood it, and was in  
9 agreement.

10 Q. Okay. Up to this point, the video that we're watching,  
11 it's about -- almost 8:07 a.m. there on the screen.

12                  Had you and Defendant Wagner had any discussion regarding  
13 whether or not he had violated any law up to this point?

14 A. No.

15 Q. Okay.

16                  MR. BLANCHARD: Amy, if you'd pull video clip 1-C and  
17 play it, please.

18                    (Video played from 1:39 p.m. to 1:41 p.m.)

19 BY MR. BLANCHARD:

20 Q. Agent Nielsen, does this clip reflect where you requested  
21 consent from Defendant Wagner to search his phone?

22 A. Yes, it does.

23 Q. And did he decline to give you consent?

24 A. He did decline.

25                  MR. BLANCHARD: Amy, if you'd please pull up

1 clip 1-D, please.

2 (Video played from 1:41 p.m. to 1:44 p.m.)

3 BY MR. BLANCHARD:

4 Q. And, Agent Nielsen, does this clip reflect where you  
5 requested consent from Defendant Wagner to search his email  
6 accounts?

7 A. Yes, it does.

8 Q. Did he give you full consent?

9 A. No, he did not.

10 Q. Can you explain what Google Photos is to the Court.

11 A. Sure. So Google itself is an electronic service provider.  
12 They offer multiple services to their users. That includes a  
13 search browser, map services, email accounts. Google Photos  
14 is another one of their services. It is a cloud-based imagery  
15 storage service. You can store pictures and videos there and  
16 access it using your Google account login.

17 Q. Okay. And is that the caveat that he removed from the  
18 consent, removing the Google Photos application from the  
19 consent to search?

20 A. Yes, that is correct.

21 Q. Okay. And did Defendant Wagner ultimately execute a  
22 consent to search as to his Google email account specifically?

23 A. Yes.

24 Q. Okay.

25 MR. BLANCHARD: Amy, would you pull up video

1 clip 1-E, please.

2 (video played from 1:45 p.m. to 1:51 p.m.)

3 BY MR. BLANCHARD:

4 Q. And, Agent Nielsen, is this the clip that reflects  
5 Defendant Wagner's review and execution of the consent to  
6 search his Google email accounts?

7 A. Yes.

8 MR. BLANCHARD: Amy, would you pull up Exhibit 3,  
9 please.

10 MS. McCLENDON: (Complied.)

11 BY MR. BLANCHARD:

12 Q. And, Special Agent Nielsen, I'm going to have you review  
13 the form on the screen there, which is Exhibit 3, which has  
14 already been admitted.

15 Is this a true and accurate copy of the consent to search  
16 form that Defendant Wagner executed in the van in the clip we  
17 just saw?

18 A. Yes, it is.

19 MR. BLANCHARD: And, Amy, would you mind highlighting  
20 the last paragraph in the signature block there for us.

21 MS. McCLENDON: (Complied.)

22 BY MR. BLANCHARD:

23 Q. And Defendant Wagner explicitly excluded the Google Photos  
24 platform from that consent; is that right?

25 A. Yes, that's correct.

1 Q. Okay. Can you read the last paragraph of the consent form  
2 there.

3 A. I provide this written consent freely and voluntarily  
4 without fear, threats, coercion, or promises of any kind. I  
5 understand that I have the right to refuse to provide this  
6 consent, and I voluntarily waive that right.

7 I understand that I may withdraw this consent at any time  
8 by providing written notification to the HSI official listed  
9 below or another official associated with the investigation;  
10 however, I also understand that all information obtained or  
11 examined by HSI may be lawfully seized and used as evidence.

12 Q. And that's his signature beneath that; right?

13 A. That's correct.

14 MR. BLANCHARD: Amy, if you would, please, pull up  
15 Video Clip 1-F.

16 (Video played from 1:53 p.m. to 1:53 p.m.)

17 BY MR. BLANCHARD:

18 Q. All right. So this is a snippet of the clip we just  
19 watched. But in this little snippet, Agent Nielsen, you  
20 mentioned driving up to Defendant Wagner's house.

21 Can you describe, in relation to Defendant Wagner's house,  
22 where the van was parked when the interview began.

23 A. So we are parked on the roadway leading up to Mr. Wagner's  
24 house. So Sophia Drive is a dirt/gravel roadway. We are  
25 parked near the end of it. And the end of that road ends at

1 the base of Mr. Wagner's driveway. So we can see his driveway  
2 from where we are, but the driveway then kind of leads, winding  
3 up, onto the property to his residence.

4 Q. Okay. At this point, looking at the timestamp, a little  
5 over an hour has passed since the interview in the van began;  
6 is that right? I believe we talked about the beginning. It  
7 started around 7:51.

8 And at this point, it's 8:52 on the screen there; is that  
9 accurate?

10 A. Yes.

11 Q. Okay.

12 MR. BLANCHARD: Amy, if you could pull up Video 1-H,  
13 please.

14 (Video playing at 1:54 p.m.)

15 MR. BLANCHARD: Would you pause it there just a  
16 second, Amy.

17 (Video stopped at 1:55 p.m.)

18 BY MR. BLANCHARD:

19 Q. Agent Nielsen, in this clip, you asked Defendant Wagner if  
20 you could drive up to the house; is that accurate?

21 A. That's correct.

22 Q. And how did he respond to that?

23 A. That that was fine.

24 Q. Okay.

25 MR. BLANCHARD: You can restart, Amy.

1 (Video playing at 1:55 p.m.)

2 MR. BLANCHARD: All right. Amy, if you'd pause it  
3 there, please.

4 (Video stopped at 1:56 p.m.)

5 BY MR. BLANCHARD:

6 Q. All right. So before you start to drive here, you mention  
7 something in your hand and tell defendant Wagner that you're  
8 going to put it back in his car if that's okay with him.

9 What were you referring to?

10 A. His employment IDs that were found on his person during  
11 the execution of the search warrant.

12 Q. Okay. And your intention was to give those IDs back to  
13 defendant Wagner by putting them in his vehicle?

14 A. Correct.

15 Q. Okay. His car was searched pursuant to a warrant.

16 Was his car ever taken from the residence by law  
17 enforcement?

18 A. No, it was not.

19 Q. Okay. And at this point, it's right at 9:00 a.m. here on  
20 the screen, bottom left, according to the timestamp.

21 And that's when you start driving up to the house; is that  
22 right?

23 A. Correct.

24 Q. Okay.

25 MR. BLANCHARD: Amy, will you restart.

1 (video playing at 1:57 p.m.)

2 MR. BLANCHARD: Amy, would you pause it there.

3 (video stopped at 1:58 p.m.)

4 BY MR. BLANCHARD:

5 Q. All right. So, at this point in time, we're at 9:01:23  
6 on the time stamp, and you are now parked in front of Mr. -- or  
7 Defendant Wagner's residence; is that right?

8 A. That's correct.

9 Q. So it took you a little over a minute to pull from the  
10 road where the interview initially started up to his residence  
11 in the van; is that accurate?

12 A. Yes.

13 Q. All right. During the drive, what did you ask  
14 Defendant Wagner about what he needed?

15 A. I asked him if he needed anything.

16 Q. Okay. And how did he respond to that?

17 A. That he didn't; he was fine.

18 Q. Okay. And at this point, you park, and you take a break;  
19 is that right?

20 A. Yes.

21 Q. And what did you do on the break?

22 A. I went inside and checked in with the premises search  
23 warrant team, which included seeing where the search was at,  
24 if any evidence had been seized, any devices forensically  
25 processed, just following up with the interior team and then

1 updating them with any information I had obtained during the  
2 search -- during the interview process.

3 Q. Okay.

4 MR. BLANCHARD: Amy, would you restart, please.

5 (video played from 1:59 p.m. to 1:59 p.m.)

6 BY MR. BLANCHARD:

7 Q. All right. And that's the end of the clip there.

8 So, at this point, you get out of the van; is that right?

9 A. Correct.

10 Q. You go in the residence?

11 A. Correct.

12 Q. And you left Defendant Wagner with Investigator Connelly  
13 during the break.

14 Why?

15 A. A couple of reasons. If Mr. Wagner had needed anything, I  
16 wanted to make sure there was somebody there to either meet  
17 that need or communicate it to me so it could be met. I left  
18 him in my vehicle, and my vehicle was running. And so since  
19 it's government equipment, I couldn't just leave him there by  
20 himself, so Investigator Connelly stayed.

21 And then as part of the operational plan, how the search  
22 warrant was executed, anybody that was identified on scene  
23 during the execution of the search warrants had a law  
24 enforcement official with them for the duration of the search  
25 both for the protection of law enforcement on the scene but

1 also the protection and security of evidence.

2 Q. Okay. All right. Did you inform Defendant Wagner of any  
3 restrictions on actions or movements before you got out of the  
4 van to go in the residence?

5 A. No.

6 Q. All right. Was the van unlocked during the break?

7 A. It was.

8 Q. And was the van unlocked during the interview?

9 A. Yes.

10 Q. All right. Did Defendant Wagner ever ask you to leave the  
11 van up to this point?

12 A. No, he did not.

13 Q. And prior to this break, did Defendant Wagner admit to any  
14 involvement in child pornography whatsoever?

15 A. No.

16 Q. And according to the timestamp, at this point, we're at  
17 9:01 and 27 seconds; is that right?

18 A. Yes.

19 Q. All right.

20 MR. BLANCHARD: Amy, if you'll pull up Clip 1-I,  
21 please, and pause it there at the beginning.

22 MS. McCLENDON: (Complied.)

23 BY MR. BLANCHARD:

24 Q. And so this is a clip of you getting back in the van after  
25 the break; is that right?

1 A. That's correct.

2 Q. And how long did the break last? So we were at 9:01 just  
3 a minute ago, and we're now here at 9:52.

4 A. About 50 minutes.

5 Q. Okay.

6 MR. BLANCHARD: Amy, if you'll restart the video,  
7 please.

8 (video played from 2:01 p.m. to 2:01 p.m.)

9 BY MR. BLANCHARD:

10 Q. All right. So immediately upon returning from break, what  
11 do you ask Defendant Wagner?

12 A. I ask him again if he needs anything.

13 Q. What did he say?

14 A. That he's all right; he doesn't.

15 Q. Okay. And where is the van parked at at this point?

16 A. This is parked in front of his home.

17 Q. And you can see his home from the van at this point?

18 A. Yes.

19 Q. Okay. After asking Defendant Wagner if he needs anything  
20 else, at this point, how do you elect to continue the  
21 interview?

22 A. I make the decision to share with him more about our  
23 investigation and the evidence that we have identified up until  
24 that point specifically relating to his involvement with child  
25 pornography.

1 Q. Okay.

2 MR. BLANCHARD: Amy, will you play clip 1-J, please.

3 (video played from 2:02 p.m. to 2:02 p.m.)

4 BY MR. BLANCHARD:

5 Q. Could you hear the audio on that clip?

6 A. I couldn't.

7 Q. This is the lowest audio clip, and so I'm going to have  
8 Amy replay it. It's a very short clip, and I'm going to have  
9 her replay it. And see if you can sort of hear the audio and  
10 hear what you're saying.

11 A. Sure.

12 (video played from 2:02 p.m. to 2:02 p.m.)

13 BY MR. BLANCHARD:

14 Q. Could you hear it there?

15 A. I'm reminding him again that he's not under arrest.

16 Q. Okay. And that was my question.

17 what did you say to him at that point?

18 A. I'm reminding him again he's not under arrest.

19 Q. Okay. All right. So you tell defendant Wagner again he's  
20 not under arrest at this point.

21 How long after this point in the conversation does he  
22 admit to accessing and distributing child pornography online?

23 A. About 15 minutes.

24 Q. Okay. And, generally, what does he tell you about his  
25 involvement? That's a long conversation that lasts over an

1 hour. Just give us a summary of what he tells you during that  
2 conversation.

3 A. He says that he used the internet to search for and access  
4 child pornography, that he sent and received child pornography  
5 within online chat groups, and that he acted as an administrator  
6 for one of those chat groups.

7 Q. Okay. Thank you.

8 Prior to admitting to accessing and distributing the child  
9 pornography online, did Defendant Wagner ever indicate to you  
10 that he wanted to consult with a lawyer?

11 A. No, he did not.

12 Q. Did Defendant Wagner ever indicate to you that he no  
13 longer wanted to talk to you?

14 A. No.

15 Q. Did he ever indicate to you that he wanted to leave the  
16 van?

17 A. No.

18 Q. Okay. And prior to admitting -- or Defendant Wagner  
19 admitting that he accessed and distributed child pornography  
20 online, did you ever promise Defendant Wagner anything in  
21 exchange for that admission?

22 A. No, I did not.

23 Q. Did you ever yell at him?

24 A. No.

25 Q. Ever threaten him?

1 A. No.

2 Q. How would you describe the tone of your conversation with  
3 Defendant Wagner up to the point of his beginning to discuss  
4 involvement with child pornography?

5 A. I'd describe the tone as cordial, comfortable,  
6 professional.

7 Q. Okay.

8 MR. BLANCHARD: Amy, would you pull video 1-K,  
9 please. And just start it and pause it at the beginning for  
10 me.

11 MS. McCLENDON: (Complied.)

12 BY MR. BLANCHARD:

13 Q. All right. So after Defendant Wagner admits involvement  
14 with child pornography, as an investigator and as an agent,  
15 what's your next concern?

16 A. My next concern is whether he's committed any hands-on  
17 sexual abuse acts against children.

18 Q. Okay. And before we play this clip, you can see the  
19 camera angle. It's shifted here a little bit. Can you explain  
20 what happened that changed the view on the camera at this  
21 point.

22 A. It appears that the camera or one of the cables connecting  
23 the camera were bumped, which just shifted the camera on the  
24 dash.

25 Q. Okay.

1                   MR. BLANCHARD: All right. Amy, would you restart,  
2 please.

3                   (video played from 2:05 p.m. to 2:08 p.m.)

4 BY MR. BLANCHARD:

5 Q. All right. So, Agent Nielsen, how do you address your  
6 concern of whether Defendant Wagner had maybe touched a child  
7 in a sexual way?

8 A. I specifically ask him if he's ever had sexual contact  
9 with a child under the age of 18.

10 Q. And did you make any offers for a polygraph to prove that?

11 A. I did.

12 Q. Okay. Did Defendant Wagner agree to take a polygraph?

13 A. He did.

14 Q. And where was the polygraph set up?

15 A. At the Dodge County Sheriff's Office.

16 Q. Did you give Defendant Wagner the option of driving  
17 himself to the polygraph?

18 A. I did.

19 Q. And what did he say?

20 A. That we could drive him instead.

21 Q. Okay. Did you tell Defendant Wagner anything about  
22 whether he had to take a polygraph?

23 A. I told him that it was voluntary.

24 Q. Okay. And you took another break at this point; is that  
25 correct?

1 A. That's correct.

2 Q. And why?

3 A. To update our team on the inside as well as to contact the  
4 polygraph examiner and let them know that Mr. Wagner had agreed  
5 to take a polygraph examination.

6 Q. Okay. Thank you.

7 MR. BLANCHARD: Amy, will you pull up video 1-L,  
8 please.

9 (video played from 2:09 p.m. to 2:10 p.m.)

10 BY MR. BLANCHARD:

11 Q. All right. And prior to leaving the residence for the  
12 polygraph, did you offer Defendant Wagner water or food?

13 A. I did.

14 Q. And does this clip reflect that?

15 A. It does.

16 Q. What did he say?

17 A. He declined.

18 Q. Okay.

19 MR. BLANCHARD: Amy, 1 -- video 1-M, please.

20 (video played from 2:10 p.m. to 2:11 p.m.)

21 BY MR. BLANCHARD:

22 Q. All right. So after the break, you have a short  
23 conversation with Defendant Wagner.

24 What were you asking him about?

25 A. I was clarifying some device use information and then some

1 accountant identifiers with him.

2 Q. Okay. And then at the end of this clip, I think you ask  
3 him if he's ready to go to the polygraph; is that correct?

4 A. Correct.

5 Q. And how does he respond?

6 A. That he is.

7 Q. Okay. So from the time you make contact with  
8 Defendant Wagner in the morning until the time you leave the  
9 residence to drive to the polygraph, do you know about how  
10 much time has elapsed?

11 A. Less than 4 hours.

12 Q. Okay. And that includes the breaks that you took; is that  
13 right?

14 A. Correct.

15 Q. Okay.

16 MR. BLANCHARD: Amy, will you pull up Video 1-N and  
17 just hold on for just a second before you start it.

18 MS. McCLENDON: (Complied.)

19 MR. BLANCHARD: So this one is a clip that's made  
20 while driving, so the audio is a little bit more bumpy and hard  
21 to hear, and so I'll just let you guys know that in advance.  
22 If we need to adjust the volume, we can pause.

23 If you'll go ahead and play, Amy.

24 (Video played from 2:12 p.m. to 2:13 p.m.)

25 (No omissions)

1 BY MR. BLANCHARD:

2 Q. All right. So this conversation occurs while you're  
3 driving from the residence to the polygraph location; is that  
4 accurate?

5 A. That's correct.

6 Q. And what did Defendant Wagner say when you asked him about  
7 how the van worked for the interview that you guys had?

8 A. He said that it worked fine. And I asked if he would have  
9 preferred to interview somewhere else like the back porch, and  
10 he said no, that the van was fine.

11 Q. Okay. So to recap, during the interview that occurred in  
12 the van, did Defendant Wagner appear to you to be coherent in  
13 his conversation with you?

14 A. Yes, he did.

15 Q. Okay. Was he able to engage in a logical conversation  
16 with you?

17 A. Yes.

18 Q. At any point during the interview in the van, did you tell  
19 Defendant Wagner he was under arrest?

20 A. No, I did not.

21 Q. And at any point during the interview in the van, did you  
22 tell Defendant Wagner he was required to talk to you?

23 A. No, I did not.

24 Q. At any point during the interview in the van, did you tell  
25 Defendant Wagner he could not leave the van?

1 A. No.

2 Q. And at any point during the interview in the van, did  
3 Defendant Wagner indicate that he no longer wanted to talk to  
4 you?

5 A. No.

6 Q. At any point during the interview in the van, did you  
7 make any promises to Defendant Wagner in exchange for his  
8 admissions?

9 A. No, I did not.

10 Q. And at any point during the interview in the van, did you  
11 make any threats to Defendant Wagner in order to elicit any  
12 admissions?

13 A. No.

14 MR. BLANCHARD: Your Honor, those are all the  
15 questions that I have.

16 THE COURT: All right. Any cross?

17 MS. MADDOX: Yes, Your Honor.

18 THE COURT: Anybody need to take a break before we  
19 begin?

20 MS. MADDOX: That would be a great idea.

21 THE COURT: All right. Do you want some time to talk  
22 with your client?

23 MS. MADDOX: Restroom.

24 THE COURT: Restroom. Yeah. Okay. Well, just take  
25 as much time as you need, and we'll reconvene when everybody's

1 ready.

2 COURT SECURITY OFFICER: All rise.

3 (A recess was taken from 2:15 p.m. to 2:26 p.m.)

4 CROSS-EXAMINATION

5 BY MS. MADDOX:

6 Q. Good afternoon, Agent Nielsen. My name is Tina Maddox,  
7 and I represent Mr. Wagner. I do have a few questions for you.

8 You would agree with me that this whole process started  
9 about 7:36 in the morning on -- what was it? -- May the 9th of  
10 2023; is that correct?

11 A. I believe my interview with him started at about 7:50, so  
12 I'd have to look at any earlier time stamps to clarify that.

13 Q. Okay. Well, if you look back at Clip 10, if we bring that  
14 up . . .

15 MS. MCCLENDON: Would you like me to play it?

16 MR. BLANCHARD: Play it, Tina?

17 MS. MADDOX: Yes, please.

18 (video played at 2:27 p.m.)

19 MS. MADDOX: All right. If you would pause it there.

20 (video stopped at 2:27 p.m.)

21 BY MS. MADDOX:

22 Q. All right. So can you tell me, then, what time is  
23 displayed on this particular time stamp.

24 A. 7:35.

25 Q. And this is when the whole process with Mr. Wagner began;

1 is that correct?

2 A. Yes, ma'am.

3 Q. Okay. So you would agree with me that it began around  
4 7:36 on that morning?

5 A. Yes, ma'am.

6 Q. Okay. At that point in time -- later on in the same  
7 video -- and I'm not going to ask that it be played any  
8 further.

9 But around 7:37 in the morning, you acknowledge that you  
10 grabbed him by the arm and escorted him away; is that correct?

11 A. I don't know that I'd use the same language to describe  
12 it, but I did redirect him from the road by touching his arm,  
13 yes, ma'am.

14 Q. Well, you had your arm -- your hand around his arm; is  
15 that correct?

16 A. Yes, ma'am.

17 Q. And this roadway that you're referring to is not a major  
18 thoroughfare; is that correct?

19 A. That's correct.

20 Q. It is actually a limited -- more like, I would call it, a  
21 pig path that goes to and ends at his home; is that correct?

22 A. It's a dirt roadway that ends at his home, but it's not a  
23 major thoroughfare.

24 Q. And there was not any large amount of traffic there other  
25 than law enforcement; is that correct?

1 A. Yes, ma'am, that's correct.

2 Q. Okay. So there really was no need to redirect him out of  
3 traffic because there was none; right?

4 A. I would disagree with you on that.

5 Q. Where was the traffic?

6 A. It was the caravan that you see in the later video. It  
7 was our premises search warrant team that was preparing to come  
8 down that roadway.

9 Q. Okay. Well, let's talk about that for a minute.

10 So the caravan that you refer to, how many automobiles  
11 were in that caravan?

12 A. Three to four, I believe.

13 Q. Three to four?

14 A. (Nodded head.)

15 Q. And how many total officers in the two teams that you had  
16 were there on scene?

17 A. I don't know that number off the top of my head. I'd have  
18 to go back and look at our roster.

19 Q. Okay. Was it more than 5?

20 A. Yes, ma'am.

21 Q. More than 10?

22 A. Yes, ma'am.

23 Q. More than 15?

24 A. I couldn't say other than that.

25 Q. Definitely more than 10?

1 A. Yes, ma'am.

2 Q. So 10-plus officers were on scene; correct?

3 A. Were involved in the search warrant execution, yes, ma'am.

4 Q. Gotcha. All right. So when you escorted him by the arm  
5 and went over to the other vehicle, at that point, at 3 minutes  
6 and 13 seconds into that particular video, you were actually  
7 executing a search warrant there on his person; is that  
8 correct?

9 A. Yes, ma'am.

10 Q. So you had his person detained to search it; right?

11 A. Yes, ma'am.

12 Q. And, also, since you had a search warrant on his person,  
13 he didn't have the option at that point to not get searched,  
14 did he?

15 A. He did not, no, ma'am.

16 Q. He was under the control of you as an officer of the law;  
17 is that correct?

18 A. During the execution of that search warrant --

19 Q. Okay.

20 A. -- yes, ma'am.

21 Q. Also, at that exact same time, you informed him that you  
22 had a search warrant of his automobile; is that correct?

23 A. I don't recall discussing the vehicle search warrant with  
24 him at that time.

25 Q. Okay. Even if you didn't discuss it with him, isn't it

1 true you had a search warrant authorizing the search of his  
2 vehicle?

3 A. Yes, ma'am.

4 Q. So, at that point, both his person and his automobile were  
5 not free to leave the scene of that incident -- correct? --

6 A. Yes, ma'am.

7 Q. -- because both of them had to be searched?

8 A. Yes, ma'am, that's correct.

9 Q. Got it.

10 Now, with regard to Clip 1-A, you acknowledge that there's  
11 a red light on the camera inside that van; is that right?

12 A. Yes, ma'am.

13 Q. And it's apparent that it's recording?

14 A. Yes, ma'am.

15 Q. You placed him in the back of the van; is that right?

16 A. Yes, ma'am.

17 Q. And he was actually, I'm going to say, penned in because  
18 there was an officer up front with a gun; correct?

19 A. Correct.

20 Q. Did you have a gun in the back?

21 A. Yes, ma'am, I did.

22 Q. And you were in the back with him; is that right?

23 A. Yes, ma'am.

24 Q. Now, it's a van. Vans often come equipped with child  
25 safety locks.

1           Did this van have a child safety lock?

2   A. It did not have a child safety lock engaged, no, ma'am.

3   Q. That wasn't my question.

4           Did it have a child safety lock?

5   A. I would have to assume that it does, but I've never  
6       checked.

7   Q. Okay. So he was in the back of the vehicle accompanied  
8       by yourself and another officer, both of which who were armed;  
9       correct?

10   A. Yes, ma'am.

11   Q. And, at that point, you had not told him he was released  
12       from the search warrant of his person, did you?

13   A. That is correct.

14   Q. Now, if you look at the recording on 1-P at about 7:58,  
15       would you agree with me that, through this whole process, you  
16       were very nice to him?

17   A. Yes, I would agree with you on that.

18   Q. It was kind of in a buttering-up kind of way?

19   A. I don't know that I would describe myself as buttering up,  
20       but I would agree that I was kind.

21   Q. Okay. Do you acknowledge that, throughout this interview  
22       and particularly at the 8:50 mark, my client was rubbing his  
23       eyes?

24   A. I recall one of the clips earlier. He rubbed one of his  
25       eyes during that clip, yes, ma'am.

1 Q. Okay. He did it more than once.

2 Are you aware of that?

3 A. When I watched it just now in court, there was one time  
4 that I noticed.

5 Q. Okay. Have you watched this video other than today ever?

6 A. Yes, ma'am.

7 Q. And did you watch it from start to finish?

8 A. Yes, ma'am.

9 Q. And how many times have you watched it?

10 A. I'm not sure.

11 Q. Okay. Did you watch the portion where -- at 8:58  
12 where you indicated you were going to leave him there with  
13 Investigator -- was it Connelly?

14 A. Connelly, yes, ma'am.

15 Q. Okay. You watched that part?

16 A. Yes, ma'am.

17 Q. And, at that point, you actually got out of the back,  
18 went around, got into the driver's seat, and Connelly got in  
19 the back with him; is that correct?

20 A. I'm not sure if we're referring to the same person.

21 Are you referring to when I was driving to the house and  
22 Investigator Connelly got in the back seat?

23 Q. Yes.

24 A. Yes, ma'am.

25 Q. So y'all swapped sides?

1 A. Yes, ma'am.

2 Q. Okay. Now, you -- at 9:01 in the morning, you did ask him  
3 if he needed any water; is that correct?

4 A. Yes, ma'am.

5 Q. And isn't it true that strongly suggests that he wasn't  
6 able to go get it himself?

7 A. No, ma'am.

8 Q. No. Okay.

9 At 9:52, he again is visibly tired. And, at that point,  
10 he brushes his hair from his eyes, and he's leaned back in the  
11 seat.

12 Do you recall that?

13 A. I recall seeing those things, yes, ma'am.

14 Q. Okay. And I think that's when you actually left to go  
15 check on other things.

16 You did watch where he was speaking to Investigator -- or  
17 officer Connelly while you were gone?

18 A. No, ma'am.

19 Q. You didn't watch that part?

20 A. At some point in typing the interview, I would have early  
21 on but not in preparation for this hearing.

22 Q. Okay. Are you aware that he asked that officer why he  
23 couldn't leave?

24 A. I'm not aware of that conversation.

25 Q. Okay. And are you also aware that he told that officer

1 at -- about the times -- that he had just gotten off work -- he  
2 had just worked a 12-hour shift and gotten off?

3 A. I'm not aware of any communications that happened when I  
4 wasn't present.

5 Q. Okay. So you don't normally debrief any officers that are  
6 left unattended with your subjects?

7 A. Information is typically passed to me as needed, but I  
8 don't recall Investigator Connelly sharing anything with me  
9 that day.

10 Q. And my client actually asked, "why do y'all keep me in  
11 here?"

12 You don't remember any of that?

13 A. If that was said to Investigator Connelly, I wouldn't have  
14 been privy to that conversation.

15 Q. Right. But you testified earlier that you watched this  
16 video in preparation, in general, for this case at least once;  
17 correct?

18 A. I also just testified that I didn't watch the portions  
19 where it was just your client and Investigator Connelly in the  
20 vehicle.

21 Q. So you don't think that the portions where you were not  
22 present are not [sic] relevant?

23 A. I believe that I'm able to testify to what conversations I  
24 had with Mr. Wagner. I wasn't present for conversations he had  
25 with other officers, so I don't believe I can testify to those.

1 Q. Okay. Would you agree with the statement that normally  
2 Mr. Wagner would have been asleep by the time you had gotten  
3 that far into the investigation, about 9:52 in the morning?

4 A. I don't think there's any way for me to know that or agree  
5 to that.

6 Q. We'll talk about that in a minute.

7 You made a statement earlier that the conversation was  
8 less than 4 hours.

9 Isn't it true it was very close to 4 hours?

10 A. No, ma'am.

11 Q. No? Okay.

12 Well, isn't it true, at the least, that the interaction  
13 was very close to 4 hours?

14 A. For me, I think interaction and conversation would be the  
15 same thing, so I'd have to say no. I was not in the car with  
16 him for 4 hours.

17 Q. How far is it from 7:36 in the morning, which we agree  
18 that's when this whole thing started, to 11:18 that morning?  
19 How many hours is that?

20 A. It would be just under 4 hours -- just over 4 hours.

21 Q. Okay. So that was quite a lengthy interaction.

22 Do you agree?

23 A. That's -- I would agree that he was in conversation or  
24 around law enforcement for the duration of that time.

25 Q. And you went on -- at 11:19, you stated, "If I check with

1 my team, if they are finished with your vehicle, you could  
2 drive yourself there."

3 You did say that; right?

4 A. Yes, ma'am.

5 Q. But if they weren't, he could not have driven himself;  
6 correct?

7 A. Or we would have had to discuss other options or wait for  
8 the car to be finished.

9 Q. Okay. And do you agree that a tired driver is the same  
10 thing as an impaired driver?

11 A. I think that our level of, I guess, rest or alertness can  
12 impact our ability to focus while we're driving.

13 Q. Okay.

14 (Defense Counsel and Defendant conferred.)

15 BY MS. MADDOX:

16 Q. And at the beginning of this encounter, there were  
17 flashing lights that started the encounter at 7:36; is that  
18 correct?

19 A. Yes, ma'am.

20 Q. Okay. Now, you acknowledge that you had done your  
21 homework on Mr. Wagner; is that right?

22 A. I believe so.

23 Q. Right. You had already found out where he worked?

24 A. Correct.

25 Q. You already knew what hours he worked?

1 A. Generally, yes.

2 Q. So you knew that he would be coming off of a full shift  
3 when you went to that premises at 7:36 on May 9th of 2023;  
4 correct?

5 A. Yes, ma'am.

6 Q. You knew he would have worked the entire night before;  
7 right?

8 A. Yes, ma'am.

9 Q. Okay. You admit that you did not, at any point during the  
10 course of this encounter, read him his Miranda rights?

11 A. I did not.

12 Q. Okay. And you admit that no one under your charge read  
13 him his Miranda rights?

14 A. That's correct.

15 Q. Okay. And it would be safe to say you fully intended to  
16 arrest Mr. Wagner at the end of any encounter you had with him  
17 on this particular day?

18 A. No.

19 Q. No? Okay.

20 You never told him he was free to leave?

21 A. Not in those words, no, ma'am.

22 Q. You never told him, "You're free to leave"?

23 A. No, I did not.

24 Q. Okay. And, in fact, you offered him food; right?

25 A. I did.

1 Q. You offered him water?

2 A. Yes.

3 Q. But you never offered him a chance to go to sleep, did  
4 you?

5 A. I did not.

6 Q. And you knew he had just gotten off work?

7 A. Yes, I did know.

8 Q. Okay. You never released him from the search warrant of  
9 his person, did you?

10 A. Not verbally, I guess, ma'am, no.

11 Q. Well, how else would you do it other than verbally?

12 A. (No response.)

13 Q. And you never released his car to him; is that correct?

14 A. No, ma'am, that's not correct.

15 Q. That morning, did you release his car to him to drive?

16 A. His car was left on scene, and he was given the option to  
17 drive it if it was ready to be driven. But his car was never  
18 taken into our custody. It remained on scene.

19 Q. Right. But you never, in the video, said, "Okay. Your  
20 car is free. You can drive it yourself."

21 Did you do that?

22 A. I didn't have to because he asked for a ride instead.

23 Q. Okay. Perhaps because he was so tired?

24 A. I wouldn't be able to answer that question.

25 MS. MADDOX: Nothing further.

1                   THE COURT: Anything follow-up to that?

2                   MR. BLANCHARD: Brief redirect, Your Honor.

3                   REDIRECT EXAMINATION

4                   BY MR. BLANCHARD:

5                   Q. Agent Nielsen, I just want to cover a few of the questions  
6                   that Counselor Maddox has asked you.

7                   So she started out talking to you about referring to the  
8                   road as not a major thoroughfare.

9                   Do you remember that line?

10                  A. I do.

11                  Q. Can you explain to the Court who developed the operations  
12                  plan in this case.

13                  A. It was a team approach: myself, one of the co-case agents  
14                  from the HSI Savannah office, along with Dodge County Sheriff's  
15                  office.

16                  Q. Okay. And were you aware of how the operations plan would  
17                  be executed on the day of the search?

18                  A. Yes, I was.

19                  Q. Okay. Can you start and explain with -- the planned  
20                  traffic stop of Defendant Wagner and what you knew was about to  
21                  happen with the other search team that morning.

22                  A. Okay. So we had officers and agents stationed along not  
23                  the road that Mr. Wagner lived off of but the main road that  
24                  was adjoined to that road and some other points in the city  
25                  along the route we expected Mr. Wagner to take. When

1 Mr. Wagner was seen pulling onto the roadway leading to his  
2 residence, the marked units -- the plan was for them to pull in  
3 behind him to follow him to his residence and initiate a  
4 traffic stop as he was approaching or entering the driveway for  
5 his residence.

6 Once that contact was made, myself and Investigator  
7 Connelly would come up, execute the search warrant on  
8 Mr. Wagner's person, give him the opportunity to interview.  
9 While that was happening, it would also be communicated with  
10 the second search warrant execution team that was responsible  
11 for the premises search warrant.

12 At the same time all of that is happening, they would be  
13 approaching on that roadway. As long as we had determined that  
14 it was -- that we had control of the situation on the roadside,  
15 that it would be safe for them to approach and kind of continue  
16 on past that to the residence, then they would go up to the  
17 premises, make contact with anybody there, and execute the  
18 search warrant.

19 Q. Okay. And does that play into the reason of why you  
20 redirected Mr. Wagner away from the roadway?

21 A. It does.

22 Q. How long do you estimate that you touched Mr. Wagner's arm  
23 to redirect him from the roadway to the side of the road?

24 A. 4 to 5 seconds, maybe.

25 Q. Okay. Counselor Maddox also referenced, you know, in her

1 terms, you penning in Defendant Wagner in your van and that you  
2 had a gun.

3 Did you brandish your gun at any point during the  
4 interview with Mr. Wagner?

5 A. I did not.

6 Q. Did you make any reference to your gun or Investigator  
7 Connelly's gun at any point during the interview with  
8 Defendant Wagner?

9 A. No.

10 Q. There was a point in time where, during the interview,  
11 you're parked on the road near Defendant Wagner's driveway and  
12 you elect to drive the van up to Defendant Wagner's residence.

13 Do you recall that?

14 A. I do.

15 Q. At that point, do you recall Investigator Connelly getting  
16 in the back of the van and you getting in the front?

17 A. I do.

18 Q. Can you tell us why that was the way that that was handled  
19 in the transition from the road, up the driveway to the house?

20 A. In order to transport individuals, per our policy, there  
21 would need to be two officers or agents in the vehicle  
22 regardless. But specifically with Investigator Connelly moving  
23 to the back, primarily, it's a safety concern at that point as  
24 I'm stepping into the driver's seat with an individual seated  
25 behind me. For the safety of everybody involved, there needs

1 to be somebody else back there with them.

2 Q. Okay. And during the drive, Defendant Wagner was situated  
3 directly behind you; is that correct?

4 A. He was.

5 Q. Okay. Let's talk about the ultimate arrest in this case.  
6 Did you arrest Defendant Wagner on the day of the search?

7 A. No.

8 Q. Was he arrested on federal charges on the day of the  
9 search?

10 A. No.

11 Q. Who arrested Defendant Wagner that day?

12 A. Dodge County Sheriff's Office.

13 Q. Okay. And were those charges in any way related to  
14 receipt or distribution of child pornography online?

15 A. No.

16 Q. You obtained a search warrant from this Court in order  
17 to search Defendant Wagner's person, car, and residence that  
18 morning; is that correct?

19 A. Yes.

20 Q. Did you obtain an arrest warrant from this Court prior  
21 to executing the arrest -- the search warrant on Defendant  
22 Wagner's car, person, or premises?

23 A. No.

24 MR. BLANCHARD: Okay. Those are all I have,  
25 Your Honor.

1 THE COURT: Any follow-up, Ms. Maddox?

2 MS. MADDOX: No. Thank you, Your Honor.

3 THE COURT: All right. Thank you for your time and  
4 testimony. You may step down and remain in the courtroom if  
5 you like.

6 Any further witnesses by the Government?

7 MR. BLANCHARD: No, Your Honor.

8 THE COURT: Any witnesses by the Defense?

9 MS. MADDOX: No, Your Honor.

10 THE COURT: Okay. Any final arguments by the -- this  
11 is your motion, so from you, Ms. Maddox, any closing remarks?

12 MS. MADDOX: Your Honor, we agreed if the Court would  
13 allow us to submit a closing argument via brief as opposed to  
14 an oral one after the preparation of the transcript.

15 THE COURT: okay. That's perfect.

16 And who's going to order the transcript?

17 MR. BLANCHARD: Your Honor, the Government will order  
18 the transcript.

19 THE COURT: okay. All right.

20 well, is there anything further in this matter we  
21 need to discuss today before we take up the next case?

22 MR. BLANCHARD: Not from the Government's perspective.

23 MS. MADDOX: Not from the Defense, Your Honor.

24 THE COURT: Well, as always, I knew walking in that  
25 y'all would both be well prepared, and you were. And briefs

1       were well done. So thank you for all the hard work and  
2       attention to detail y'all have put into the case so far. It  
3       makes my job a lot easier when I have good attorneys on both  
4       sides.

5                 And as I may have mentioned to the defendant at the  
6       beginning of this case -- I'm not sure if I did or not. I bet  
7       I did. But, you know, I'm proud of the criminal defense bar  
8       that we have representing defendants in criminal cases here,  
9       Mr. Wagner. I'm proud of the fact we live in a country where,  
10      when your freedom is at stake like this, we value each and  
11      every citizen's freedom to such a degree that we make sure you  
12      have quality representation in court.

13               And if you look at the Augusta and Statesboro and  
14      Dublin Divisions at the lawyers we have on our panel who do  
15      this work, number one, most of them are busy enough in their  
16      own private practices that they don't have to take these cases.  
17      And Ms. Maddox is certainly one of those who doesn't have to  
18      take these cases. But she takes it so that -- she takes these  
19      cases for the same reason that so many others do. It's because  
20      they understand the value -- the critical importance of having  
21      quality lawyers represent defendants in situations like this.

22               So if I didn't tell you already, I think you've seen  
23      here today that you're in very good hands with her and she does  
24      a very good job on her cases.

25               And so, Ms. Maddox, I appreciate the preparation you

1 always bring.

2 MS. MADDOX: Thank you, Your Honor.

3 THE COURT: All right. If there's nothing further,  
4 then -- are we ready to roll into -- we need a few minutes  
5 before the next case, so we'll take a short recess.

6 MS. MADDOX: Thank you, Your Honor.

7 THE COURT: All right. Thank you.

8 COURT SECURITY OFFICER: All rise.

9 (Proceedings concluded at 2:47 p.m.)

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1 C E R T I F I C A T E  
2

3 I, Victoria L. Root, Certified Court Reporter, in and for  
4 the United States District Court for the Southern District of  
5 Georgia, do hereby certify that, pursuant to Section 753,  
6 Title 28, United States Code, the foregoing is a true, correct,  
7 and complete transcript of the stenographically reported  
8 proceedings held in the above-entitled matter and that the  
9 transcript page format is in conformance with the regulations  
10 of the Judicial Conference of the United States.

11 WITNESS MY HAND AND SEAL this 20th day of May, 2024.  
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